

Panaji, 2nd November, 1978 (Kartika 11, 1900)

SERIES II No. 31

OFFICIAL GAZETTE



GOVERNMENT OF GOA, DAMAN AND DIU

GOVERNMENT OF GOA, DAMAN AND DIU

Department of Personnel and Administrative Reforms

Order

No. 6-13-78-Div. I

Whereas Shri A. F. L. Noronha, Grade II Officer of Goa, Daman and Diu Civil Service and officiating as Tribal Project Officer, Collectorate of Daman, Daman has given three months notice for premature retirement in terms of F.R.56(K) with effect from 16-10-1978 and that he will retire from Government service from the afternoon of 15th January, 1979, on completion of 50 years on 18-10-1975.

2. Now the Administrator of Goa, Daman and Diu being the appropriate authority under F.R.56(K) has taken note of the said notice given by Shri A. F. L. Noronha, Tribal Project Officer with effect from 16-10-1978. On expiry of the three months' notice period Shri A. F. L. Noronha, stands retired from Government service with effect from the afternoon of 15th January, 1979.

3. Shri A. M. Bhandare, Mamlatdar, Daman shall officiate as Tribal Project Officer, Daman with effect from 15-1-1979 (A.N.) till further orders in addition to his own duties.

By order and in the name of the Lieutenant Governor of Goa, Daman and Diu.

V. J. Menezes, Under Secretary (Personnel).

Panaji, 26th October, 1978.

Order

No. 6-18-74-Div. I

The Administrator of Goa, Daman and Diu is pleased to order the transfer of Shri D. S. Savordencar, Forest Settlement Officer, Panaji and to post him as Additional Deputy Collector, Collectorate of Goa vice Shri J. J. F. A. S. Luis, Additional Deputy Collector transferred and posted as Forest Settlement Officer. Shri Luis shall hand over the additional charge of the post of Additional Deputy Collector to Shri Savordencar.

2. This order shall be effective from the date of expiry of earned leave granted to Shri Savordencar vide order of even number dated 12th October, 1978.

By order and in the name of the Administrator of Goa, Daman and Diu.

V. J. Menezes, Under Secretary (Personnel).

Panaji, 28th October, 1978.

Works, Education and Tourism Department

Order

No. WET/7/15/1/78-WET-PR

Shri P. Rajamurthi a candidate recommended by Union Public Service Commission is appointed on temporary basis

as Assistant Engineer (Civil) in the Public Works Department in the scale of Rs. 650-30-740-35-810-EB-35-880-40-1000-EB-40-1200 (Revised) plus all other admissible allowances with effect from the date of taking over the charge.

2. The appointment is subject to the terms and conditions specified in the Memorandum of even number dated 10-5-1978.

3. His pay will be fixed at minimum of the pay scale.

4. The appointment is temporary and further subject to the condition that in case he has a bad reputation/character or antecedents, his services will be terminated.

5. His posting will be done separately once he reports this Administration.

By order and in the name of the Administrator of Goa, Daman and Diu.

F. A. Figueiredo, Under Secretary, Works, Education and Tourism.

Panaji, 23rd October, 1978.

Public Works Department

Office of the Chief Engineer

Order

No. PWD/1477/69/78-79

Read: — Report No. SEII/75/230/78-79 dated 14-8-1978, from the Superintending Engineer II, PWD, Panaji-Goa.

Sanction of the Govt. is hereby conveyed to the transfer of the following Village Panchayat Roads to Public Works Department, with immediate effect, for their maintenance and improvement.

1. Santana-Talaulim Road in a length of 3 Kms. in the Village Panchayat of Curca in Tiswadi Taluka.
2. Tivim-Sircaim Road in a length of 1.2 Kms. in the Village Panchayat of Tivim-Sircaim in Bardez Taluka.
3. Road from Corjuem to Podval in a length of 3 Kms. in the Village Panchayat of Aldona in Bardez Taluka.

By order and in the name of the Lieutenant Governor of Goa, Daman and Diu.

C. G. Desai, Chief Engineer, P.W.D., and Ex-Officio Addl. Secretary to the Govt.

Panaji, 25th September, 1978.

Local Administration and Welfare Department

Order

No. 6-2-76-LSG(50)

In exercise of the powers conferred by Section 13(3)(b) of the Suppression of Immoral Traffic in Women and Girls Act, 1956 as extended to the Union Territory of Goa, Daman

and Diu, the Lieutenant Governor of Goa, Daman and Diu hereby constitutes a non-official Advisory Body for the Goa area of the Union Territory consisting of the following members to advise the Special Police Officer on all matter of general importance regarding working of the said Act.

1. Mrs. Bonnie R. Chowgule, Panaji, Chairman.
2. Mrs. Gracy D'Souza, Panaji, Member.
3. Dr. Lata P. Timble, Aquem, Margao Goa, Member.

4. Mrs. Anju Timblo, Panaji, Member.
5. Mrs. Onita Sardessai, Panaji, Member.

This supersedes earlier Government order of even number dated 21st November, 1977 and corrigendum dated 22-2-1978.

By order and in the name of the Administrator of Goa, Daman and Diu.

E. N. Rodrigues, Under Secretary (Revenue).

Panaji, 24th October, 1978.

Revenue Department

Notification

No. RD/TNC/BND/280/67-LXXXV

In pursuance of the proviso to sub-section (3) of Section 26 of the Goa, Daman and Diu Agricultural Tenancy Act, 1964, the Government hereby specify the following bund/s prescribed in the schedule appended hereto as protective bund/s for the purpose of the said proviso:—

SCHEDULE

Sr. No.	Name of the bund	Village	Taluka	Approximate area protected (in Hectares)	Description of the bund
1	2	3	4	5	6
1.	Daddo	Boma	Ponda	200	The internal bund starting from the paddy field "Daddo" belonging to Shri Xantaram Naik of Margao and ending with the paddy field "Daddo Khazan" belonging to Venibal Y. Loundo of Panaji and situated at Boma.
2.	Chiklocho	Chikhali	Bardez	12	This bund is starting from the paddy field "Chikhali Khazan" belonging to the Comunidade of Colvale and ending with the paddy field "Chikhali Khazan" belonging to the same Comunidade of Colvale situated at Chikhali of Bardez Taluka. The part of the bund is running parallel to the creek of River Chapora.
3.	Chikhelpain	Cundaim	Ponda	48	The internal bund is starting from the bund of Shri Cundaikar of Cundaim and ending with the same bund running between the paddy field Chikhel Pain, and situated at Cundaim of Ponda Taluka.

By order and in the name of the Administrator of Goa, Daman and Diu.

Egipcio Noronha Rodrigues, Under Secretary (Revenue).

Panaji, 26th October, 1978.

Declaration

No. RD/COM/39/72

It is hereby declared that by order of Lt. Governor dated 7-2-1972 a plot of land admeasuring 599.64 sq. metres (five hundred ninety-nine point sixty four square metres) belonging to the Comunidade of Serula and granted on provisional basis on 19-3-1972 to Smt. Maria Filomena de Souza for construction of residential house has been reverted back to the Serula Comunidade as the same has not been utilised for the purpose for which it was granted.

This is issued as per Art. 346 of the Code of Comunidades in force.

Egipcio Noronha Rodrigues, Under Secretary (Revenue).

Panaji, 23rd October, 1978.

Industries and Labour Department

Order

No. CLE/1/ID(8)/75-IT-2/75

The following award given by the Industrial Tribunal, Goa, Daman and Diu on an industrial dispute between the management of M/s. Zuari Agro Chemicals Ltd., Zuarinagar, Goa and their workmen represented by the Zuari Agro Chemicals Ltd. Employees' Union (Goa), Panaji, Goa is hereby

published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947).

By order and in the name of the Lieutenant Governor of Goa, Daman and Diu.

G. M. Sardessai, Under Secretary, Industries and Labour.

Panaji, 13th October, 1978.

Before *Shri R. V. Kollali*, Presiding Officer,
Industrial Tribunal cum Labour Court, Panaji

Reference No. IT/16/75

Workmen represented by The Zuari Agro Chemicals Ltd. Employees' Union (Goa),
Opp. Cafe Real, Top Floor, Panaji-Goa.

... 1st party

Versus

M/s. Zuari Agro Chemicals Ltd., Zuari-nagar, Goa.

... 2nd party

In this dispute, the management contended, inter alia, that the reference of the dispute made by the Government was bad in law and not maintainable on three specific grounds: firstly, it was contended that the Government in making the reference had acted without any jurisdiction or in excess of its jurisdiction; secondly, it was contended that the Government had not applied its mind while making the reference; and thirdly, it was stated that the settlement of 12-11-1973, 11-3-1974, 30-4-1974 and 3-4-1974 were effected and disintegrated the workmen to raise this dispute.

The above contentions form the subject matter of Preliminary issues which are as follows:

"PRELIMINARY ISSUES"

1. Whether the reference is bad in law and not maintainable as having been made.
- a. Without any jurisdiction or in excess of Government's jurisdiction;
- b. Without application of mind;
- c. Though the settlements of 12-11-73, 11-3-74, 30-4-74 and 3-5-74 were existing and disentitled the 1st party to raise this dispute.

My findings are:

- i. a. No;
- b. No;
- c. No finding at this stage.

Reasons

It was vehemently maintained on behalf of the 2nd party management that the reference suffered from the defects set out in the written statement and that the same could be found out by a mere reading of the admitted records without any other evidence being necessary. On this plea of the 2nd party management, the parties argued at length. These findings are being recorded on the preliminary issues which cover the contentions as to the alleged defects. There have been four settlements between the workmen and the management and they are all in force at present. Therefore, it is contended that the present dispute cannot be raised by the workmen because the subject matter of this dispute has been covered by the existing settlements. If the subject matter of the present dispute is covered by an existing settlement, it would undoubtedly follow that it would not be open to the workmen to agitate on the matter as long as the settlement is operative and in force. The question would then be as to whether the subject matter of the present dispute is covered by any of the settlements.

The present dispute has its origin in the letter of 6-1-1975 by the Union Secretary to the Managing Director of the 2nd party. The said letter is Annexure "L" to the 2nd party's written statement. By it, the Union Secretary wished to bring to the notice of the Managing Director that in late April 1974, the Union delegation met the Managing Director concerning 40 hours working week to the personnel in the Jai Kisan Bhawan (which is the administrative office of the 2nd party), the demand of extending the same to the personnel in the factory premises was also brought up and the Managing Director explained the difficulties but promised in the presence of Mr. R. F. A. D'Souza, that weightage, money-wise would be given to the personnel in the factory and that this promised weightage had not materialised in the Wage Report of Dr. Pennathur. The Secretary therefore, called on the Managing Director to make good the promise as to weightage failing which the Union would begin an agitation. Annexure "M" to the written statement is the reply dated 10-1-75 by the Managing Director whereby the alleged promise was denied and instead, it was maintained that it had been made clear that the 40 hours week could not be extended to the factory. It was also stated that the dispute as to fixation of wages, etc. had been placed before the Labour Commissioner and under conciliation the matter was referred to Dr. Pennathur whose report on the matter had been promptly given effect to by the 2nd party and hence the question of the working hours could not now be raised and any agitation would be illegal etc. By letter dated 14-1-75 (Annexure "N" to the written statement) the Union Secretary reiterated his stand as to the promise mentioned in Annexure "L" and stated that the denial of the promise at the highest level had broken down the trust which the workmen had in the management and in these circumstances, the Union had issued a directive as per copy attached to the letter to protect the interests of the workers. The management was called on to make good the promise before the directive became effective i.e. 00 hours of 17-1-75. On receiving Annexure "N", the management wrote to the Labour Commissioner requesting him to intervene in the matter of the demand of the Union for enforcement of 40 hours week in the factory which had never been contemplated and to convince the Union of the unreasonableness of their stand specially after all disputes in respect of wages, allowance and working hours had been settled (vide Annexure "O" of 16-1-75). The management informed the

Union Secretary also on 16-1-75, that the proposed action would amount to an illegal strike and the management was prepared to discuss before the Labour Commissioner. The Labour Commissioner by his letter dated 16-1-75 informed both parties that he had started conciliation proceedings on the dispute in respect of enforcement of 40 hours working week. Then followed the failure report (Annexure "P"), the concluding portion of which reads "As the management was not willing to consider the demand for reduction of working hours or give any weightage in this regard, a failure of conciliation is recorded." Then the Government obtained the statement of the case from the management and thought it desirable to refer the dispute for adjudication. The relevant portion of the Schedule to the order of reference runs as follows:

"Whether the demand of workmen ... for reduction of the existing working hours of the factory or weightage in wages in lieu thereof is justified."

Now, the parties had arrived at four settlements on different points. Still one does not find a clause or term in any of them incorporating what is commonly called a period of Industrial Truce. No clause or term in any of the settlements bars a new demand being made by the workmen. This factual position has to mean that only if the new demand has been, expressly or by necessary implication, covered by any clause or term of any of the operative settlements, the workmen cannot make it. If not, the workmen are at liberty to raise the demand.

I proceed to consider the earlier demands and the settlements to see whether the demand that is to be adjudicated now has been covered by any of the settlements.

The first charter of demands is dated 11-9-73 (Annexure "A"). In this demand No. 5 is worth noticing. It runs:

"5. Weekly off:—An employee should be entitled for his weekly off after six days of his service in the company. An employee should not be compelled to work on his weekly off day."

The demand No. 6 envisages payment of special allowance if an employee is made to work on his weekly off day and the giving of one day's compensatory off as per law in force.

The demand No. 8 is about hours of work and overtime. Under it, the workmen wanted that the actual hours of work in the company should not exceed more than 7½ hours for the second shift and more than 7 hours for the third shift per day. The demand relating to overtime is not relevant for the present discussion.

Demand No. 10 referred to working hours for the general shift and envisaged that it should be from 8-30 a.m. to 5.00 p.m. (instead of 8.30 a.m. to 5.30 a.m.) with a reduction of half an hour in the hour long lunch break.

On 8-10-73, another charter was forwarded by the Union, as per Annexure "B". In this, the third demand reads:

"Office timings:—The Office timings of the employees working in administrative and finance department of the company shall be from 9.00 a.m. to 1.00 p.m. and 2.00 p.m. to 5.00 p.m. on week days and from 9.00 a.m. to 1.00 p.m. on Saturdays."

The settlement on these demands is at Annexure "C" and is dated 12-11-73.

Demand No. 5 as to weekly off was dropped and the practice then current was to continue. Demand No. 6 was agreed on in a particular way. Demand No. 8 was dropped, and the practice then current was to continue so far as the hours of work were concerned. Demand No. 10 as to the hours of work of general shift was also dropped. Demand No. 3 of the second a supplementary charter was also dropped. This settlement was to be in force till 15-9-1976. Now demand No. 5 in relation to weekly off was that, after every six days of work, an employee was to get his weekly off. This demand was dropped and the practice that was going on was agreed to be continued. Then the question of the hours of work for the second and third shift under demand No. 8 and for the general shift under demand No. 10 were dropped. This again can mean only that the existing practice was agreed to be continued. Thus then, under the settlement of 12-11-73 the number of days of work for earning the weekly off day by an employee and the hours of work for the general shift and the second and third shifts were agreed to be continued as they existed before the demand. As no

evidence has been led at this stage, it is not possible for me to know what is the existing practice. But from the statement of claim it can be discerned that the factory workers are required to work for 48 hours a week. From this, it is easy to infer that such was the practice that was existing and that was agreed to be continued under the settlement of 12-11-73. When that is so during the operative period of the said settlement no demand that could affect or seek to alter the "weekly off" which was the subject matter of demand and which was resolved by the settlement of 12-11-73 incorporating as agreement for the continuance of the existing practice.

As there is nothing in either the statement of claim of the workmen on the written statement of the management as to what is the existing practice on the question of the "weekly off", it is not possible to know what precisely is the practice in this behalf. In the course of arguments on both sides, the point was not even touched. While studying the records for the purposes of deciding on the preliminary issues, I noticed demand No. 5, in Annexure "A". The result of reading demand Nos. 5, 8 and 10 together and the terms of settlement in regard to them is of utmost importance and may decide the present dispute. That aspect of the matter has not been obviously considered by either side as can be gathered from the fact that there is no mention made of it in the statement of claim or the written statement. The point was not touched during the arguments also.

In these circumstances, it is deemed just and proper to allow the practice to formulate their respective cases in this behalf. The workmen shall file supplementary claim statement on the point above indicated. Thereafter the management shall file its supplementary written statement. So there is no finding on preliminary issue No. 1(c) which will be recorded after the parties comply with the directions given herein above.

In regard to preliminary issue Nos. 1(a) and (b), I must say that they are matters for judicial jurisdiction and not for this tribunal's decision. It was open to the management to have agitated the matter before the appropriate judicial authority for having the reference of the dispute by the Government quashed.

This Tribunal is not the appropriate forum for urging these points. This aspect of the legal position was conceded on behalf of the management.

Thus these preliminary issues Nos. 1(a) and (b) are answered in the negative. No finding is recorded under preliminary issue No. 1(c) at this stage and the workmen are asked to file supplementary claim statement formulating their case precisely about the continued effect of demand Nos. 5, 8 and 10 in the charter of demands dated 4-9-73 and settlement on this demand. Thereafter the management shall file its supplementary written statement on the matter. The issue will then be reheard and decided.

Sd/-

(R. V. KOLLALI)

Presiding Officer

Place: Dona Paula.

Date: 15-9-1976.

In continuation of the findings and order recorded on 15-9-1976, it is to be stated that the 1st party workmen have filed additional statement pursuant to the directions contained in the said order making out the following assertions:

The weekly off, according to the practice existing at the time of the charter of demand of 4-9-73, was available at the end of continuous work of seven days and not after every six days in a week; and the workmen were also called to work on weekly-off day; the charter of demands wanted that practice to be discontinued and give the weekly off day after six days of work to the workmen; the demand having been given up while the settlement was formulated, the practice detailed has continued; the point in dispute in this reference is the demand for 40 hours work per week or in the alternative weightage in the wages; another demand was for restricting the hours of work for the 2nd and 3rd shifts by half an hour and an hour respectively as the workmen were required to work in shifts other than the general shift; the settlement has made all the shifts of equal duration; the dispute in the reference is to bring working hours for factory workers on par with those of the other staff working in the factory precincts and premises and, hence the demand for 40 hours of work for the factory workers; demand No. 10 in the said charter was only for adjusting

the working hours of the general shift by seeking to curtail the lunch break by half an hour and closing the shift earlier by half an hour; this demand was dropped allowing the existing practice to continue; and, in view of these explanations the present demand for 40 hours of work cannot be considered to be barred.

The 2nd party urged the following: one third of the factory workmen worked in rotating shifts and two thirds worked in the general shift; those who work in the general shift put in 48 hours of work from Monday to Saturday with the weekly off on Sunday; those who worked in the other shifts also put in 48 hours of work in a week but, the rotation of the shift was so arranged that the workmen got their weekly off day after continuous work for 7 days thus giving a double off to the workmen after every six weeks, which practice is in conformity with the provisions of the Factories Act; the Union wanted the weekly off at the end of 6 days of work as against the said practice, but dropped this particular demand and the regulated hours of work under the existing practice were accepted as binding as a final settlement of the demand on working hours in a week; asking for 40 hours per week amounts to demanding less working hours in a week than agreed under the settlement and also increasing weekly off days; the demand for reduction of working hours per week also militates against the settlement on demand No. 6; under demand No. 8 the Union wanted reduction of working hours of 2nd and 3rd shifts and finally agreed for continuing the existing practice of 8 hours of work for these shifts and the overtime payment then in vogue; demand No. 10 as also demand No. 11 and the settlement on them conclude the present demand.

The demand Nos. 5, 8 and 10 were dropped and the two sides agreed on the continuance of the practice that was prevailing at the time as can be noticed from the settlement dated 12th November, 1973.

The meaning to be attached to the demand No. 5 would have to be that the union wanted the entitlement of the weekly off after six days of work to become a reality in fact because in the scheme of rotation of shifts for the workmen then prevailing each of them got it after 7 days of working and after six weeks two day off, a system which assured that every workman got 52 weekly off days in a year. This has been so contended by the 2nd party which has produced a printed shift schedule for the year 1-3-1973 to end of February, 1977 along with the additional written statement. The union has not filed a reply to the additional written statement. So the shift schedule and the explanation offered by the 2nd party in the additional written statement can be accepted as representing the true state of the existing practice. It would appear from the said schedule that the workers in the three shifts were divided into 7 groups and the rotation was so arranged that each of the groups was able to get a different day of the week as its weekly day off covering all the days of the week for weekly off days in a period of 7 weeks. Thus if one group got its weekly off on a Sunday (the first day of the week) in the first week, in the following week its off day would be on Monday and the next following week on Tuesday and so on, until the seventh week when its weekly off would be on Saturday, and in the eighth week on a Sunday again. The shift schedule has obviously been drawn up keeping in view the provisions of Section 61(7) of the Factories Act read with rule 86 of the Factories Rules which has prescribed a particular form in this behalf, (See form No. 15 annexed to the said Rules). The continuance of the existing practice was agreed to in the settlement.

Under Demand No. 8, the Union sought a change in the hours of work for the 2nd and 3rd shifts, wanting a reduction of half an hour and one hour respectively in them and also a particular Scheme for overtime wages. During the settlement, the demand for reduction in shift hours was dropped and the existing practice was agreed to be continued. In regard to the claim for overtime wages, it was agreed to that the Factories Act and any relevant legislation on the subject matter should apply.

Demand No. 10 related to the change of the hours of the general shift. This demand was also dropped and the existing practice was agreed to be continued.

The weekly off and the shifts were thus to be continued as existing before the demands according to the specific terms of the Settlement of 12-11-1973. The present demand asking for 40 hours of work per week is claimed to be available to the Union on the ground that the demand is being made in

order to bring the working hours for factory workers on par with those of other staff working in same precincts and premises, in other words, the working hours for the office or administrative staff. It is pleaded that the existing Scheme has worked in a discrimination in the hours of work and the present demand is intended to remove the discriminatory working conditions.

Now, the working hours for the Administrative office is the subject matter of a settlement between the 1st Party Union and the 2nd party management. The settlement was signed on 3-5-1974 whereby 40 hours of work per week for the Administrative/Office Building was agreed on with certain provisions for contingencies etc. This settlement has specifically recorded that it was to operate in modification of clause 31 of the Settlement of 12-11-1973. Clause 31 dealt with the demand No. 3 in the supplementary or additional Charter of demands dated 8-10-1973. In the settlement of 12-11-1973, this particular demand was shown as dropped and obviously there was no agreement on the continuance of the existing practice. The demand had been for 5 days of 7 hours work and a half working day of 4 hours. This was settled by providing for 8 hours of work for 5 days as a normal condition. It is worth repeating that the 1st party Union is a party to the settlement in regard to the 40 hours of work for the Administrative Office Building. It is now the very Union which demands the application of this Scheme of working hours for factory workers as well.

The ambit, scope and nature of work in an office are reasonably and rationally different from the ambit, scope and nature of work in the process of manufacture which is to go round the clock and the work is kept on by providing for shifts. Therefore the work in an office is in a different category from the work in the process of manufacture.

Apart from the above consideration, the agreement for the continuance of the existing practice in the matter of weekly off and the shift hours for the 2nd and 3rd shifts and the general shift prohibit the raising of a dispute on those subjects. The present dispute is not for any alteration of the hours of work for the 1st shift only but it embraces the working hours for all those engaged in the work of manufacture in the factory. The Settlement of 12-11-1973 has incorporated a settlement in respect of shift allowance also (See clause 11 thereof).

The present argument that the settlement of 3-5-1974 introduces a discrimination cannot be availed off by the 1st party Union since it was instrumental for and a party to both, the settlements. The reasons for the present demand and the present dispute cannot be a consideration for getting out of the terms and conditions of a settlement during the period of its tenure. The demand now in dispute cannot be fitted into the scheme of things envisaged by clauses 5, 8 and 10 and the understanding as to shift allowance provided for in Clause 11 of the Settlement of 12-11-1973. Hence the present demand cannot be made.

In the light of the view taken herein above, the issue now for decision i.e. Issue No. 1(C) is held against the 1st Party Union. That renders the reference bad in law as the demand is not open during the continuance of the agreement of 12-11-1973.

The following award is made.

AWARD

The Reference is held to be bad in law as the demand is not maintainable during the continuance of the settlement of 12-11-1973. The proceedings are closed.

R. V. Kollali

Presiding Officer

Place: Panaji.

Dated: 29-9-1978.

Order

No. IRM/CON(209)/75-IT-11/76

The following Award given by the Industrial Tribunal, Goa, Daman and Diu on an industrial dispute between the management of M/s. Shree Krishna Plastic Industries, Vapi, Daman and their workmen S/Shri Luis Piedade Fernandes, Victor Pereira, Claudio Rozario, Alberto Pereira and Francis

Rozario is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947).

By order and in the name of the Lieutenant Governor of Goa, Daman and Diu.

G. M. Sardessai, Under Secretary, Industries and Labour.

Panaji, 17th October, 1978.

Before Shri R. V. Kollali, Presiding Officer,
Industrial Tribunal-Cum-Labour Court,
Government of Goa, Daman and Diu,
Panaji-Goa

Reference No. IT/18/76

Shri Luis Fernandes & others,
C/o. Alberto Pereira,
Bairo Assucena
Moti Daman.

... 1st Party.

V/s.

M/s. Shree Krishna Plastic Industries,
Blacksmith Road,
Vapi, Daman.

2nd Party.

The Government of Goa, Daman and Diu, by its order No. IRM/CON(209)/75-IT/11/76/1220, dated 5th August, 1976, referred the dispute between five workmen of M/s. Shree Krishna Plastic Industries, Vapi, Daman and their employer for adjudication by this tribunal. The schedule of the order of reference runs as follows:

SCHEDULE

"Whether the action of the management of M/s. Shree Krishna Plastic Industries, Vapi, Daman, in terminating the services of S/Shri Luis Piedade Fernandes, Victor Pereira, Claudio Rozario, Alberto Pereira and Francis Rozario, with effect from 1-12-1975 is legal and justified;

If not, to what relief the workmen are entitled to?"

The claim statement was filed contending that the five workmen had joined the Trade Union and tried for getting the legitimate rights to the workmen and betterment in the service conditions, and addressed a letter to the Commissioner, Labour and Employment, Goa, Daman and Diu on 24th November, 1975, and that this upset the management which proceeded to issue letters terminating their services without assigning any proper just and valid reasons. It also asserted that the five employees were permanent employees and that the action of the management was illegal as it was intended to thwart the Trade Union activity and hence reinstatement with full back wages and continuity of service be ordered.

By the written statement, the management contended that the workmen had not joined any Union, nor had a copy of their letter to the Commissioner, Labour and Employment, Goa, Daman and Diu, been sent to the management; the services of the workmen had been terminated as discharge simplicitor in conformity with the terms of contract and they have been paid one month notice pay and salary for earned leave etc. The workmen have since been engaged in other gainful employment in Daman and Vapi and are getting higher salary than what they were getting from the 2nd party, and, that in view of this circumstances the claim for reinstatement made by the workmen was not at all justified and further that the workman Shri Luis Piedade Fernandes who is the first workman in the schedule has left the country and settled down in Holland.

It is worthwhile noticing that the claim statement is signed by only four of the five workmen mentioned in the schedule and the workman mentioned first in the schedule has not signed. In the place indicated for his signature there is an endorsement which reads "not signed as the party has gone to foreign".

Subsequently, the parties requested this Tribunal to transfer the case to either Bombay or Gujarat Industrial Tribunals on the grounds that it would be more convenient to them. They were informed by this Tribunal that what they requested

for could not be within the authority of this Tribunal and so the parties could take appropriate steps in the matter. Thereafter, the parties went on informing the tribunal that they had already initiated steps for a settlement. Now the parties have informed this Tribunal that they have arrived at a settlement whereby the workman from Sr. No. 2 to 5 in the order of reference have been paid gratuity and retrenchment compensation calculated at Rs. 425/- for each one of them and that, the money has been paid to the concerned workmen who have therefore agreed to give up their claim for reinstatement with back wages and continuity of service. As regards the first workman Shri Luis Piedade Fernandes set out in the schedule to the reference, the letter forwarding the settlement has reiterated that the workman has gone to Holland permanently and is no longer in India. Here it is to be noted that the claim statement filed by the first party has not been signed by the said Luis Piedade Fernandes, and the placement for his signature bears the endorsement "not signed as the party has gone to foreign". It is therefore, obvious that the said Shri Luis Piedade Fernandes has no surviving interest in the dispute. There are no reasons before this Tribunal for not accepting what

has been recorded in the claim statement and in the forwarding letter referred to above, in so far as it relates to the said Shri Luis Piedade Fernandes.

As regards the remaining four workmen, they have received their dues and the settlement was arrived at, at the instance of the Commissioner for Labour and Employment, Goa, Daman and Diu, a fact that has been recorded in the statement itself. The settlement is therefore accepted and in terms thereof, the following award is made.

AWARD

Shri Luis Piedade Fernandes having gone out of India permanently, there is no dispute in which he is interested.

Regarding the other four workmen, there is no surviving dispute as the parties have settled their differences in terms of the settlement which shall be annexed to and form part of this award.

Dated: — 28-9-78.

Place: — Panaji.

R. V. Kollat

Presiding Officer.